

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK BLAIR, an individual,

Plaintiff,

v.

AETNA LIFE INS COMPANY,
AMERICOLD LOGISTICS, LLC,
DAWN SANFORD, et al.
Defendants.

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CIVIL ACTION NO. 06-651-MEF

**PLAINTIFF'S MEMORANDUM BRIEF IN RESPONSE TO
DEFENDANTS' AETNA LIFE INS. COMPANY,
AMERICOLD LOGISTICS, LLC AND DAWN SANFORD'S
MOTION TO DISMISS OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

In compliance with this Court's Order of August 4, 2006, Plaintiff, Frank Blair offers this memorandum brief in opposition to Defendant, Aetna Life Ins. Company, Americold Logistics, LLC and Dawn Sanford's Motions to Dismiss or, in the Alternative, for Summary Judgment. For the reasons stated herein, plaintiff asks this Court to deny defendants' motions.

FACTS

1. On November 20, 2002, Blair purchased life insurance coverage in the amount of \$40,000 for Sandra Blair.
2. A deduction in the amount of \$2.77 was taken from Blair's paycheck each pay period for supplemental life insurance on Sandra Blair until July 11, 2004, approximately three weeks after Sandra Blair's death.
3. On June 16, 2004, Sandra Blair expired.
4. Thereafter, on July 27, 2004, defendant, Aetna Life Ins. Company informed Blair that no coverage existed. See correspondence attached hereto as Exhibit A.

PLAINTIFF'S COMPLAINT

On or about June 14, 2006, Blair commenced the present lawsuit by filing a complaint in the Circuit Court of Montgomery County, Alabama. Asserting diversity jurisdiction and ERISA claims, Defendants removed this matter to this Court.

Plaintiff's claims against defendants include fraud, breach of contract and negligence in collecting and processing Blair's premiums for life insurance.

ARGUMENT

Plaintiff is not required by the Federal Rules of Civil Procedure to set out in detail the facts upon which he bases his claim. All that is required is a short and plain statement of the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2). The statement must be sufficient to afford the defendant fair notice of what the claim is and the grounds upon which it rests. Thus, the issue of a Fed.R.Civ.P. 12(b)(6) motion is not whether the plaintiff will ultimately prevail on his or her claims, but whether the allegations contained in the complaint would be sufficient to allow discovery as their proof. *Whitney Info. Network, Inc. v. Xcentric Ventures, LLC*, 2005 U.S.Dist.LEXIS 24920 (D.Fla., July 14, 2005 decided).

Defendants first contend that Blair's claims should be dismissed because the law is clear that in ERISA actions, you must exhaust available administrative remedies before suing in Federal Court. (Defendants' Brief P. 3) There is absolutely no evidence before this Court that Blair received a copy of an insurance policy from any source, including Aetna Life Ins. Company. In fact, the evidence implies and supports the contrary. Blair received a letter from Aetna dated July 27, 2004, that reads as follows:

Please accept our condolences at the recent death of your wife.

Unfortunately, we have researched our records and found that as of the date of Mrs. Blair's death you did not have dependent spouse coverage **in force**. Our records reflect that you had elected dependent child

coverage, but not spousal coverage. Therefore there is no life benefit payable for this claim.

Please contact your employer if you have any questions regarding this matter.

Plaintiff's Exhibit A.

A fair reading of this letter would indicate that Aetna never wrote a policy of insurance for Sandra Blair. Consequently, if no policy was ever taken out, Blair would not have received a copy of the insurance policy that would have alerted him of the necessity to pursue administrative remedies. It appears that the first time a policy was produced would have been after the filing of the lawsuit by Blair. A fair reading of the July 27th letter also supports that Blair was not advised of his need to pursue administrative remedies prior to filing a lawsuit. The question that begs to be answered is what administrative remedies are available against Aetna Life Ins. Company if, in fact, Aetna never placed in force a life insurance policy for Sandra Blair. An argument can certainly be made that the premiums taken from Blair's paycheck were never forwarded to Aetna Life Ins. Company.

Clearly, the July 27, 2004 letter did not adequately inform Blair of his rights and obligations. Law supports that the defendants cannot now contend that the claim fails because he did not exhaust administrative remedies. See *Syed v. Hercules, Inc.*, 214 F.3d 155, 162 (3rd Cir. 2000) wherein the Court cited *Counts v. American General Life & Accident Inc. Co.*, 111 F.3d 105, 108 (11th Cir. 1997) for the proposition that where a benefit termination letter does not comply with statutory and regulatory requirements, time limits for bringing administrative appeal are not enforced against claimant; thus the remedy for violation is to remand to plan administrator so claimant gets benefit of full and fair review.

Consequently, Blair's complaint should not be dismissed for failure to exhaust any alleged administrative remedy in light of the fact that there is no proof that he received a copy of any document alerting him of his administrative remedy duties nor did the termination letter alert him of any such duties. At the very least, Blair should be afforded his administrative appeal rights. Again, it

should be pointed out, what rights would be available if an insurance policy was never taken out because Aetna Life Ins. Company never received any premiums or notice of Blair's request for such a policy. Attached as Exhibit B are Blair's payroll stubs showing the deductions of premiums for life insurance policy at issue.

Defendants' next contend that the policy by its express terms, provides spousal life insurance only to a claimant's "legal spouse". (Defendants' Brief P. 4) This defense may be appropriate if a policy was written by Aetna Life Ins. Company. However, a fair reading of Aetna's termination letter to Blair would indicate that a policy of life insurance on Sandra Blair was never issued. Therefore, the claims remain as to why Frank Blair was paying insurance premiums for such a policy for many months when in fact the policy was never written.

CONCLUSION

Plaintiff respectfully prays that this Court deny Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment. The evidence indicates that Blair never received an insurance policy alerting him of his administrative duties nor did the July 27, 2004 termination letter alert him of his administrative duties. Additionally, a fair reading of the evidence would indicate that Blair paid life insurance premiums for Sandra Blair. These premiums were deducted from his paychecks. These deductions continued over many months. Blair had reason to believe that he had in effect a policy of life insurance for Sandra Blair. Apparently, the premiums deducted from his checks were (1) never forwarded to Aetna Life Ins. Company (2) Aetna Life Ins. Company denied the issuance of a policy but this denial was not provided to Blair (3) Aetna failed to convey its denial.

Respectfully submitted:

/S/ Ralph Bohanan, Jr.
RALPH BOHANAN, JR.
Attorney for Plaintiff
Bar Number: ASB-3857-B41R

OF COUNSEL:

BOHANAN & KNIGHT, P.C.
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Birmingham, Alabama 35243
Telephone: (205) 977-2200
Facsimile: (205) 977-2555
ralphb@bohananknight.com

CERTIFICATE OF SERVICE

I do hereby certify that on the 21st day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Amelia Driscoll at adriscoll@bradleyarant.com and James S. Christie, Jr. at jchristie@bradleyarant.com.

/S/ Ralph Bohanan, Jr.
OF COUNSEL



PO Box 14547
Lexington, KY 40512-4547

Ellen M. Burris
Client Services
Aetna Life Insurance
(866) 273-4639
Fax: (800) 803-5934

July 27, 2004

Frank Blair
26 Ellcott Circle
Montgomery, AL 36118

Dear Mr. Blair:

RE: Sandra M. Blair
Employer: Americold Logistics

Please accept our condolences at the recent death of your wife.

Unfortunately, we have researched our records and found that as of the date of Mrs. Blair's death you did not have dependent spouse coverage in force. Our records reflect that you had elected dependent child coverage, but not spousal coverage. Therefore there is no life benefit payable for this claim.

Please contact your employer if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Ellen M. Burris'.

Ellen M. Burris

VUD 018753 75144E

0000823802 1

Earnings Statement



AMERICOLD LOGISTICS LLC
10 GLENLAKE PARKWAY SUITE 800
ATLANTA, GA 30328

Period Ending: 04/18/2004
Pay Date: 04/23/2004

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 0
AL:

FRANK BLAIR
26 ELCAR CIRCLE
MONTGOMERY, AL 36108

Social Security Number: 421-80-3290

Earnings	rate	hours	this period	year to date
Regular Hours	11.0600	80.00	884.80	7,174.70
Overtime Hrs	16.5900	13.15	218.16	1,011.95
Holiday				260.32
Vacation				257.76
Gross Pay			\$1,102.96	8,704.73

Your federal taxable wages this period are \$966.02

Deductions	Statutory	this period	year to date
Federal Income Tax		71.25	485.64
Social Security Tax		61.94	481.74
Medicare Tax		14.49	112.67
AL State Income Tax		39.36	302.77
Other			
Gam Fee		0.50	
Med/Onl PreTax		103.85	934.65
Supp Child Life		0.76	6.84
Supp Ee Ad&D		1.11	3.33
Supp Ee Life		8.30	48.18
Supp Emly Ad&D		2.30	20.70
Supp Spse Life		2.77	8.31
Support 3		113.50	1,021.50
401(K)		33.09	261.14
401(K) Loan 1		49.82	448.38
Miscellaneous			10.00
Net Pay		\$599.92	

* Excluded from federal taxable wages



AmeriCold Logistics, LLC
10 Glenlake Parkway
Suite 800, South Tower
Atlanta, GA 30328

Page 001 of 001

Period Ending: 05/30/2004
Check Date: 06/04/2004
Check Number: 0000846846
Batch Number: 000000000118

Taxable Marital Status: M
Social Security Number: 421-80-3290
Exemptions/Allowances Add'l
Fed: 00
AL: 00

FRANK BLAIR
26 Elcar Circle
Montgomery, AL 36108

Earnings	Rate	Hours	This Period	Year-to-Date
Overtime at	16.5900	11.10	184.15	1593.10
Regular Hour	11.0600	78.72	870.64	9668.62
Holiday	0.0000	0.00	0.00	348.80
Vacation	0.0000	0.00	0.00	788.64
Gross Pay:		89.82	1054.79	12399.16

Tax Deductions

Fed Withholding	64.24	817.30
Fed MED/EE	13.78	163.22
Fed OASDI/EE	58.96	697.92
AL Withholding	26.21	411.56
Total Taxes:	163.19	2090.00

Additional Deductions

*Medical/Dental	103.85	1142.35
*401(k)	31.64	358.69
Supplemental Life EE	8.30	64.78
Supplemental Life Child	0.76	8.86
Supplemental AD&D EE	1.11	5.55
Spouse Voluntary Life	2.77	13.85
401(k) Loan	49.82	697.84
Other Deductions	113.75	1397.95
Total Deductions:	312.00	3589.37
*Excluded from Taxable Wages		
Net Pay:	579.60	6719.79

Other Benefits and Information

	This Period	Total-to-Date
Medical/Dental	167.54	335.08
Basic Life	1.94	3.88
AD & D	0.28	0.56
401(k)	7.91	89.67

Taxable Benefit

Direct Deposit Summary

Trans	Type	Account	Amount
Net Check			579.60

Deduction Arrears

Federal Taxable Wages are \$919.30

Message

AMC 101273 75144000 AL103

Earnings Statement



AmeriCold Logistics, LLC
10 Glenlake Parkway
Suite 800, South Tower
Atlanta, GA 30328

Page 001 of 001

Period Ending: 06/27/2004
Check Date: 07/02/2004
Check Number: 0000853431
Batch Number: 000000000125

Taxable Marital Status: M
Social Security Number: 421-80-3290
Exemptions/Allowances Add'l
Fed: 00
AL: 00

FRANK BLAIR
26 Elcar Circle
Montgomery, AL 36108

Earnings	Rate	Hours	This Period	Year-to-Date
Regular Hour	11.0600	66.69	737.59	11183.51
Vacation	11.0600	16.00	176.96	965.60
Holiday	0.0000	0.00	0.00	437.28
Overtime at	0.0000	0.00	0.00	1688.49
Gross Pay:		82.69	914.55	14274.88

Other Benefits and Information	This Period	Total-to-Date
Medical/Dental	167.54	670.16
Basic Life	1.94	7.76
AD & D	0.28	1.12
401(k)	6.86	103.74

Tax Deductions

Fed Withholding	47.56	916.94
Fed MED/EE	11.76	187.41
Fed OASDI/EE	50.26	801.34
AL Withholding	20.25	454.09
Total Taxes	129.83	2359.78

* Taxable Benefit

Direct Deposit Summary

Trans	Type	Account	Amount
Net Check			476.92

Additional Deductions

*Medical/Dental	103.85	1350.05
*401(k)	27.44	414.97
Supplemental Life-EE	8.30	81.38
Supplemental Life-Child	0.76	9.88
Supplemental AD&D-EE	1.11	7.77
Spouse Voluntary Life	2.77	19.39
401(k) Loan	49.82	697.48
Other Deductions	113.75	1625.45
Total Deductions:	307.80	4206.37
*Excluded from Taxable Wages:	476.92	7208.73

Deduction Arrears

Federal Taxable Wages are \$783.26

Message

Co. Emp'd Dept'd Loc. 000124-000124
AMC 101271 75144000 AL103



AmeriCold Logistics, LLC
10 Glenlake Parkway
Suite 300, South Tower
Atlanta, GA 30328

Taxable Marital Status: M
Social Security Number: 421-80-3290
Exemptions/Allowances Add'l
Fed: 00
AL: 00

Earnings Statement

Page 001 of 001

Period Ending: 07/11/2004
Check Date: 07/16/2004
Check Number: 0000856554
Batch Number: 000000000129

FRANK BLAIR
26 Elcar Circle
Montgomery, AL 36108

Earnings	Rate	Hours	This Period	Year-to-Date
Holiday	11.0500	8.00	88.48	525.76
Regular Hour	11.0500	55.80	617.15	11800.66
Vacation	11.0600	16.00	176.96	1142.56
Overtime at	0.0000	0.00	0.00	1688.49
Green Day	70.00	0.00	0.00	0.00

Tax Deductions

Fed Withholding	44.46	961.40
Fed MED/EE	11.29	198.70
Fed OASDI/EE	48.28	849.62
AL Withholding	19.02	473.11
Total Taxes	123.05	2482.83

Additional Deductions

*Medical/Dental	103.85	1453.90
*401(k)	26.48	441.45
Supplemental Life EE	8.30	89.68
Supplemental Life Child	0.76	10.64
Supplemental AD&D - EE	1.11	8.86
Spouse Voluntary Life	2.77	22.16
401(k) Loan	49.82	747.30
Other Deductions	113.75	1739.20
Total Deductions	306.84	4513.21
*Excluded from Taxable Wages		
Net Pay	452.70	8161.41

Other Benefits and Information

Information	This Period	Total-to-Date
Medical/Dental	167.54	837.70
Basic Life	1.94	9.70
AD & D	0.28	1.40
401(k)	16.62	110.36

* Taxable Benefit

Direct Deposit Summary

Trans	Type	Account	Amount
Net Check			452.70

Deduction Arrears

Federal Taxable Wages are 4752.26

Message

Co: EmplId DeptId Loc: 000123-000123
 AMC 101271 75144000 AL103

Earnings Statement

Page 001 of 001

Period Ending: 07/25/2004
 Check Date: 07/30/2004
 Check Number: 0000859565
 Batch Number: 000000000132

FRANK BLAIR
 26 Elcar Circle
 Montgomery, AL 3610P

Taxable Marital Status: M
 Social Security Number: 421-80-3290
 Exemptions/Allowances Add'l
 Fed: 00
 AL: 00

Earnings	Rate	Hours	This Period	Year-to-Date
Overtime at	16.5900	8.15	135.21	1823.70
Regular Hour	11.0600	80.00	884.80	12685.46
Holiday	0.0000	0.00	0.00	525.76
Vacation	0.0000	0.00	0.00	1142.56
Gross Pay:		88.15	1020.01	16177.48

Other Benefits and Information	This Period	Total-to-Date
Medical/Dental	110.77	948.47
Basic Life	1.94	11.64
AD & D	0.28	1.68
401(k)	7.65	118.01

Tax Deductions

Fed Withholding	63.34	1024.74
Fed MED/EE	13.69	212.39
Fed OASDI/EE	58.52	908.14
AL Withholding	25.96	499.07
Total Taxes:	161.51	2644.34

* Taxable Benefit

Direct Deposit Summary

Trans	Type	Account	Amount
Net Check			578.01

Additional Deductions

*Medical/Dental	76.15	1530.05
*401(k)	30.60	472.05
Supplemental Life & EE	8.30	97.98
Supplemental Life - Child	0.76	11.40
Supplemental AD&D - EE	1.11	9.99
401(k) Loan	49.82	797.12
Garn - Child	113.75	736.25
Other Deductions	0.00	1079.86
Total Deductions:	280.49	4713.70
*Excluded from Taxable Wages		
Net Pay:	578.01	8739.44

Deduction Arrears

Federal Taxable Wages are
Message

Co. EmpId DeptId Loc. 000136-000136
AMC 101271 75144000 AL103

Earnings Statement



AmeriCold Logistics, LLC
10 Glenlake Parkway
Suite 800, South Tower
Atlanta, GA 30328

Page 001 of 001

Period Ending: 08/08/2004
Check Date: 08/13/2004
Check Number: 0000862541
Batch Number: 000000000135

Taxable Marital Status: M
Social Security Number: 421-80-3290
Exemptions/Allowances Add'l
Fed: 00
AL: 00

FRANK BLAIR
26 Elcar Circle
Montgomery, AL 36108

Earnings	Rate	Hours	This Period	Year-to-Date
Overtime at	16.5900	12.12	201.07	2024.77
Regular Hour	11.0600	78.71	870.53	13555.99
Holiday	0.0000	0.00	0.00	525.76
Vacation	0.0000	0.00	0.00	1142.56
Gross Pay:		90.83	1071.60	17249.08

Tax Deductions

Fed Withholding	79.15	1103.89
Fed MED/EE	15.24	227.63
Fed OASDI/EE	65.15	973.29
AL Withholding	30.44	529.51
Total Taxes	189.98	2834.32

Additional Deductions

*Medical/Dental	20.75	1550.80
*401(k)	32.15	504.20
Supplemental Life EE	8.30	106.28
Supplemental Life Child	0.76	12.16
Supplemental AD&D EE	1.11	11.10
Spouse Voluntary Life	5.54	16.62
401(k) Loan	49.82	846.94
Other Deductions	113.75	1966.70
Total Deductions:	221.10	5014.80
*Excluded from Taxable Wages		
Net Pay:	660.52	9399.96

Other Benefits and Information	This Period	Total-to-Date
Medical/Dental	2.77	945.70
Basic Life	1.94	13.58
AD & D	0.28	1.96
401(k)	8.04	126.05

* Taxable Benefit

Direct Deposit Summary

Trans	Type	Account	Amount
Net Check			660.52

Deduction Arrears

Federal Taxable Wages are \$1,018.70
Message